

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA HOUSING FINANCE AGENCY

In the Matter of Revenue Recapture
Appeal of Peggy Tjernagel
f/k/a Peggy Sue Sing

**FINDINGS OF FACT,
CONCLUSIONS AND ORDER**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on May 3, 2012, at the Office of Administrative Hearings in St. Paul. The ALJ left the hearing record open until May 18, 2012, to permit Ms. Tjernagel (Respondent) to file a Warranty Deed and the Minnesota Housing Finance Agency (Agency or MHFA) to file a response. The OAH record closed on May 18, 2012.

The Parties appeared by telephone. Darryl J. Henchen, Assistant Attorney General, appeared on behalf of the MHFA. Peggy Tjernagel appeared on her own behalf without counsel.

STATEMENT OF ISSUES

1. Whether Respondent is in default of the terms and conditions of the Note she executed and is required to repay the monies received?
2. Whether the MHFA is entitled to offset the amount owed by Respondent using revenue recapture in accordance with Minn. Stat. Chap. 270A?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent and Wayne Charles Sing (Sing) were married on or about February 9, 2000.
2. In 2003, the Respondent and Sing applied to the MHFA for a HOME Rental Rehabilitation Program Loan in the amount of \$82,299 (Loan) to rehabilitate a multi-family rental property (Property) and to provide affordable housing for individuals and families located in the City of Willmar.¹

¹ Ex. A.

3. On December 2, 2003, the Initial Loan was made to the Respondent and Sing and the Note specifying the terms of the Loan was recorded in Kandiyohi County.²

4. On December 23, 2003, the Note was amended to increase the Loan amount to \$84,000.³

5. The MHFA originated and disbursed the Loan to the Respondent and Sing. The Loan was forgivable absent an Event of Default (as defined in the Note) on or prior to November 21, 2008.

6. The Respondent and Sing separated in May 2004.⁴

7. In June 2004, MHFA and Willmar Housing and Redevelopment Authority (HRA) staff conducted an inspection of the Property and found that it failed to meet the minimum Housing Quality Standards (HQS) set forth by the U.S. Department of Housing and Urban Development. Under the terms of the Loan, borrowers are required to adhere to the HQS during the five-year effective period.⁵

8. The Respondent and Sing were divorced by judgment and decree entered July 7, 2005. The Judge presiding over the divorce awarded all right, title and interest in the Property to Sing. The Order stated the following regarding the award of the Property to Sing:

This award is subject to all encumbrances of record, which shall be the sole responsibility of Wayne Charles Sing. He shall assume and pay all encumbrances against the property, including any mortgage, contract for deed, real estate taxes, and installment of special assessments, if any. He shall indemnify and hold Peggy Sue Tjernagel harmless from any liability or obligation to make any payment whatsoever regarding this property.⁶

9. The Respondent appealed the divorce decree arguing, among other things, that the district court erred in valuing the Property and in declining to award her maintenance and attorney's fees. The Court of Appeals affirmed the district court's decision by Order dated February 6, 2007.⁷

10. By letter dated October 6, 2005, MHFA notified Respondent and Sing that the Property continued to be out of compliance with HQS property standards.⁸ In addition, MHFA noted that the Respondent and Sing failed to follow through with the

² *Id.*

³ Ex. B.

⁴ Ex. 1.

⁵ Exs. A and C.

⁶ Ex. I (Summary Real Estate Disposition Judgment at 3 (July 7, 2005) attached to Affidavit of Default).

⁷ Ex. 1 (*In re the Marriage of Sing v. Sing*, unpublished opinion, A05-2525 (Minn. App. February 6, 2007)).

⁸ The letter was sent to the Appellant and Sing at their separate addresses.

agreed upon scope of work, the utilities had been shut off, and no tenants were residing in the Property.⁹

11. MHFA informed Respondent and Sing that they had 30 days to respond to the allegations of noncompliance identified in the letter. If no response was received, MHFA indicated that it would turn over their file to the Attorney General's Office for further action.¹⁰

12. On November 20, 2008, Assistant Attorney General Darryl Hennen, on behalf of MHFA, wrote to the Respondent and Sing that a review of their file indicated that they had failed to submit certain required documentation for the years 2004-2008. The MHFA noted also that there was no evidence that the Respondent and Sing had corrected the items identified during the HQS inspection.¹¹

13. The MHFA notified the Respondent and Sing that the above deficiencies constitute "Events of Default" under the Loan and that they must be resolved within 30 days. The MHFA stated further that because of the Default, the Loan would not be forgiven.¹²

14. Between 2008 and 2011, the MHFA sent several letters to the Respondent and Sing advising them to cure the defaults relating to their Loan.¹³

15. On September 14, 2009, the Respondent sent a copy of the Summary Real Estate Disposition Judgment (Judgment) to Mr. Hennen. The Judgment was part of her divorce decree and awarded the Property at issue to Sing.¹⁴

16. The Respondent inquired of Mr. Hennen whether the Judgment released her from liability with respect to the MHFA Loan. By letter dated September 16, 2009, Assistant Attorney General Hennen informed the Respondent that the Judgment did not release her from liability under the Loan, and that she and Sing remained jointly liable for the unpaid amount.¹⁵

17. On or about December 28, 2009, Sing executed a Warranty Deed conveying an undivided one-half interest in the Property to Tayler Sing and Toni Sing, as joint tenants, and an undivided one-half interest to Diane Sing.¹⁶

18. On September 6, 2011, the MHFA sent a Notice of Default to the Respondent and Sing. The MHFA informed the Respondent and Sing that if they failed

⁹ Ex. C.

¹⁰ *Id.*

¹¹ Ex. D.

¹² *Id.*

¹³ Ex. I (Affidavit of Default).

¹⁴ Ex. E.

¹⁵ *Id.*

¹⁶ Ex. 3 (Supplemental Exhibit filed May 4, 2012).

to provide evidence that the Events of Default had been cured by October 7, 2011, it would pursue legal remedies including accelerating repayment of the Loan.¹⁷

19. On October 10, 2011, the MHFA sent a Notice of Acceleration to the Respondent and Sing.¹⁸ The Notice informed Respondent and Sing that it was accelerating the Loan and that the sum of \$84,000 was repayable immediately.¹⁹

20. The Respondent and Sing have not repayed the Loan.

21. By letter dated February 10, 2012, the MHFA notified the Respondent that it intended to recover the outstanding Loan amount through revenue recapture as authorized by Minnesota Statutes Chapter 270A.²⁰

22. By letter dated March 7, 2012, the Respondent contested MHFA's right to recover the outstanding Loan amount through revenue recapture.

23. The balance of the Loan due and owing to MHFA as of March 19, 2012, was \$84,000.

24. A Notice and Order for Hearing (Notice) in this matter was served on the Respondent by first class mail on March 19, 2012. The Notice scheduled a hearing to be held by telephone conference on May 1, 2012, at 1:30 p.m, which was rescheduled to May 3, 2012.

25. In the Notice, the MHFA alleged that the Respondent and Sing have failed to repay the Loan and have violated the terms and conditions of the Note. The MHFA alleges that it is entitled to use revenue recapture to offset the \$84,000 owed by Respondent to MHFA.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 270A.09.

2. The Minnesota Housing Finance Agency gave proper notice of the Hearing in this matter, and has complied with all procedural requirements.

3. The MHFA is a "claimant agency" within the meaning of the Minnesota Revenue Recapture Act.²¹

¹⁷ Ex. F.

¹⁸ Ex. G.

¹⁹ *Id.*

²⁰ Ex. H and Ex. 2.

²¹ Minn. Stat. § 270A.03, subd. 2.

4. A “debtor” is defined as a natural person obligated on a debt to a claimant agency or having a delinquent account with a public agency responsible for child support enforcement.²²

5. The Respondent is obligated on the MHFA Loan and is, therefore, a “debtor” owing a debt to a claimant agency within the meaning of the Minnesota Revenue Recapture Act.²³

6. Absent a release from the MHFA to the Respondent from her obligations under the Note and Loan, the Respondent remains jointly and severally liable for the MHFA Loan.

7. The effect of a “hold harmless” clause in a marriage dissolution judgment and decree may give rise to a cause of action by the Respondent against her former spouse, but it does not relieve her of her obligations to the MHFA under the terms of the Loan.

8. It is appropriate for the MHFA to recover the outstanding loan amount owed to it by the Respondent through revenue recapture.

Based on the Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED that the Minnesota Housing Finance Agency is entitled to use revenue recapture to offset the amount owed to it by Peggy Tjernagel f/k/a Peggy Sue Sing.

Dated this 15th day of June, 2012.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

²² Minn. Stat. § 270A.03, subd. 4.

²³ The Respondent may pursue her indemnification rights against her former husband pursuant to the terms of their divorce decree. See Ex. I (Summary Real Estate Disposition Judgment at 3 (July 7, 2005) attached to Affidavit of Default).

Pursuant to Minn. Stat. § 207A.09, subd. 3, this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Respondent and her (then) husband, Wayne Charles Sing, entered into the Loan Agreement with the MHFA in 2003. Together, they borrowed \$84,000 to purchase and rehabilitate a multi-family rental property. As the Borrowers, the Respondent and Sing are jointly and severally liable for repaying the Loan amount in the event of default.

The subsequent divorce decree awarding the Property to Sing, and requiring Sing to indemnify and hold the Respondent harmless regarding the debt, does not alter the Respondent's obligations to MHFA under the terms of the Loan. The divorce decree governs only the economic aspects and obligations arising out of the Respondent and Sing's marital dissolution. The MHFA was not a party to the decree.

Absent a release from the MHFA to the Respondent from her obligations under the Loan, the MHFA is entitled to recover the amount owed from the Respondent through the revenue recapture provisions under Chapter 270A. The Respondent may pursue her indemnification rights against her former husband and seek repayment of any funds paid to the MHFA pursuant to the terms of their divorce decree.²⁴

R.C.L.

²⁴ Indemnity is a remedy that allows a person to be entirely reimbursed by another for the discharge of a liability which should have been discharged by the other. *Hendrickson v. Minnesota Power & Light Co.*, 258 Minn. 368, 370, 104 N.W.2d 843, 846 (1960).